consideration. That the consideration stated in a deed is only *prima facie*, and may be controverted by parol, has been often held. This deed is silent as to the disputed question, whether the sale was by the acre or in gross. To establish the former, and obtain pay for the *whole* quantity sold is the object of the bill. This fact may be made out by parol or extrinsic written evidence. At the last term in Knoxville, in the case of *Bently* vs. *Miller and Wife*, not yet reported, we gave relief to the purchaser, Bently, upon the ground that the sale was by the acre, as proved by extrinsic evidence, where the deed was like the present, because of a deficiency of acres. Such is the uniform course of decision, where there is a substantial deficiency, and the contract by the acre, or even in gross when there is fraud or imposition. Not so where the contract is fair, and the sale is by the tract upon the judgment of the parties. The same rule must apply under the same circumstances, in favor of the vendor where there is an excess for which by mistake or fraud, he received no compensation, or has been deprived of the benefit of his contract of sale by the acre. *Horn* vs. *Denton*, 2 Sneed, 125.

The complainant, then, is entitled to relief upon the grounds of his actual contract, the mistake in the settlement, carried into the writings executed, and for the fraud of the defendant.

The decree of the Chancellor will be affirmed with costs, and the cause remanded for further proceedings upon his decree, which is in all things correct.

RECENT ENGLISH DECISIONS.

In the Exchequer Chamber, February, 1859.

PAUL *vs.* JOEL.

In an action by the endorsee against the drawer of a bill of exchange on B, the following writing was held to be a sufficient notice of dishonor:—"B's acceptance to J," (the defendant,) "for 500*l.*, due on the 12th January, is unpaid. Payment to R. & Co. is required before four o'clock."

This was an appeal from the decision of the Court of Exchequer. The facts of the case and the arguments in the court below are fully

reported 4 Jur., N. S., 1086, nom. *Paul* vs. *Jewell*. The plaintiff sued, as public officer of a provincial banking company, against the defendant as drawer of a bill of exchange, which had been endorsed to the company. At the trial, the manager of the London office of the company deposed, that on the day after the bill became due he took it to the defendant's office, and asked a clerk there if the defendant was within; the clerk replied that the defendant was within, and asked the witness his name and business. The witness replied that he should write down his business, and wrote on paper the words—"Bosworth's acceptance to Joel for 500*l*., due on the 12th January, is unpaid. Payment to Robarts & Co. is required before four o'clock." The witness gave this paper to the clerk, who said he would take it to the defendant, and went away with it; shortly afterwards returning, and delivered for answer, "it should be attended to," but did not expressly state that he had seen the defendant. It being objected that this paper was not a sufficient notice of dishonor, the learned judge left the case to the jury, who found for the plaintiff, leave being reserved to move to enter a verdict for the defendant. A rule having been obtained, cause was shown on the 27th May, 1858, against it, and the Court of Exchequer ultimately discharged the rule; and it was against this decision that the appeal was brought.

Hannen, for the defendant below.—The question is, whether this notice of dishonor is good within the decision of *Solarte* vs. *Palmer*, (2 Cl. & Fin. 73.) That case is to be followed, being a decision of the House of Lords; any case falling within its principle must be governed by it until it is reversed by Parliament. Lord Campbell, C. J., in *Everhard* vs. *Watson*, (1 El. & Bl. 801,) has, indeed, remarked that *Solarte* vs. *Palmer* had caused much confusion; but the principle of it was, that the notice of dishonor must, by necessary implication, convey to the party that the bill had been dishonored—i. e. had been not only not paid, but presented for payment, and not paid. Here there is nothing to lead to the inference that it had been presented, beyond the mere fact of the notice itself having been given. If the party had neglected to present the bill, this is the notice he would have given. [*Byles*, J.—*Bailey* vs.

Porter, (14 M. & W. 44,) is exactly this case, is it not?] There must be a presentment shown. (*Strange* vs. *Price*, 10 Ad. & El. 125.) In all the cases collected in Byles on Bills, 236, 7th ed., except *Bailey* vs. *Porter*, there were found the same words expressing that the bill had been dishonored or returned, and those words are not in this notice. In *Bailey* vs. *Porter* the holder of the bill was a banker, at whose house the bill had been made payable; all was done that could be done, and no presentment was necessary to be proved. [*Crompton*, J.—The notice in *Solarte* vs. *Palmer* was a notice of action, in fact; and it seems now to be established that the Courts are not to be bound by it, except in circumstances exactly similar.] [He cited *Furze* vs. *Sharwood*, (2 Q. B. 388,) and *Allen* vs. *Edmundson*, (2 Exch. 719.)] [*Crompton*, J.—I much prefer the decision in *Bailey* vs. *Porter* to that of *Furze* vs. *Sharwood*. *Crowder*, J.—In *Hedger* vs. *Steavenson*, (2 M. & W. 799,) Parke, B., said he was not prepared to be bound by all the reasons given in the House of Lords for the decision in *Solarte* vs. *Palmer*. *Byles*, J.—But for *Solarte* vs. *Palmer* and *Hartley* vs. *Case*, (4 B. & Cr. 339,) there would not be a doubt about the matter.]

Archibald, for the plaintiff below, was not called on.

WIGHTMAN, J.—We are all of opinion that the judgment of the Court of Exchequer must be affirmed. *Solarte* vs. *Palmer*, which was the great case relied on by the defendant's counsel, is clearly distinguishable, because there was no communication of the dishonor there; there was simply a demand of payment; and it was mainly on that ground that the decision of the House of Lords turned. In many cases *Solarte* vs. *Palmer* has been commented on. But where, as in *Hedger* vs. *Steavenson*, in the terms used there is no doubt that by reasonable intendment it is to be inferred that the bill has not been paid, though in express terms it does not appear that the bill had been presented and dishonored, that is sufficient. That is one decision. Another is *Bailey* vs. *Porter*, where the defendant was informed that the bill was unpaid. That was held to be sufficient. Here the notice is, "Bosworth's acceptance to Joel for 500*l.*, due on the 12th January, is unpaid. Payment to Robarts

& Co. is required before four o'clock." That agrees with the cases I have mentioned, and *Bailey* vs. *Porter* has been referred to on many occasions as an authority, and we think it governs this case.

Judgment affirmed.

In the Court of Exchequer, June, 1859.

GOODWYN *vs.* CHAVELEY.

Plaintiff's men were driving thirty-six oxen along the road between five and six o'clock of an evening in November; twenty-three escaped into a field of defendant's adjoining the road, through gaps in his fence. The men drove on the remaining thirteen to the nearest obtainable place of safety for the night, and returned (having been absent about an hour) for the other twenty-three left in defendant's field. Defendant had then impounded them, for which the plaintiff brought this action. The learned judge at the trial directed the jury that, under the circumstances of the case, the plaintiff's men had not removed, or tried to remove, the cattle within a reasonable time, and directed a verdict for the defendant:

Held, (Bramwell, B dissentiente,) to be a misdirection; that it was not a question of law for the opinion of the judge, but a question of fact upon the evidence given, that should be determined by the jury, and consequently there must be a new trial.

This was an action against the defendant for impounding the plaintiff's cattle. Defendant pleaded that he took them damage feasant in his close. Plaintiff replied that his cattle were lawfully going along a road, when other cattle were being driven along the road; that plaintiff's cattle escaped into defendant's close, and that plaintiff within reasonable time removed them, but that defendant had impounded them before reasonable time had elapsed for plaintiff to remove them. Defendant joined issue thereon.

The plaintiff's man, assisted by another person, was driving thirty-six oxen along the highway about half-past five o'clock at night in the month of November; some twenty-three escaped into the defendant's field through the gaps in his fences adjoining the road; thirteen remained outside in the road. The man drove on the thirteen to the nearest place he could find for them, and there lodged them for the night. He then immediately returned for the